

**E-FILED on** 7/11/06

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

MEDICAL AIR TRANSPORT, INC.,

Plaintiff,

v.

EADS FRANCE, S.A.S.; EUROCOPTER,  
S.A.S; AMERICAN EUROCOPTER  
CORPORATION, LLC f/k/a AMERICAN  
EUROCOPTER; and DOES 1 through 50,

Defendants.

No. C-05-04216 RMW

ORDER GRANTING MOTION TO  
TRANSFER CASE TO THE UNITED  
STATES DISTRICT COURT FOR THE  
DISTRICT OF NEW MEXICO

**[Re Docket No. 8]**

Plaintiff Medical Air Transport, Inc. moves to transfer this action to the District of New Mexico. No hearing on this motion is necessary; the July 21, 2006 hearing date is vacated.

Medical Air alleges that a helicopter manufactured by the defendants crashed on October 19, 2001 near Roswell, New Mexico. Compl. ¶¶ 13, 19. Medical Air filed suit against the defendants in the Northern District of California on October 18, 2005. On February 24, 2006, Medical Air, which had not served any defendant, requested an additional sixty days to effect service; Medical Air justified the request with the claim that "plaintiff's counsel is in the process of referring the matter to counsel in New Mexico." The court gave Medical Air until April 25, 2006 to serve the defendants.

To date, Medical Air has failed to serve any defendants. Medical Air is therefore instructed, pursuant to Federal Rule of Civil Procedure 4(m),<sup>1</sup> that the delay in serving defendants which has already occurred, or further delay, may result in dismissal of its action upon motion of the court or any defendant.

On May 10, 2006, Medical Air informed the court that it would file a motion to transfer "within the next 30 days." On June 16, 2006, Medical Air filed the instant motion to transfer under 28 U.S.C. § 1404(a), claiming that since the crash occurred in New Mexico, this action should be transferred there.

The court has some concerns about Medical Air's handling of the case to date. Medical Air does not explain why it filed this action in California and over half a year later seeks to have it transferred to New Mexico without serving any defendant. The court has no evidence Medical Air has engaged in this odd procedure for any improper motive, so will consider Medical Air's motion.

"For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought." 28 U.S.C. § 1404(a). Plaintiff alleges this court has jurisdiction under 28 U.S.C. § 1332 because the helicopter was worth over \$75,000, the plaintiff is a citizen of California and Nevada, and the defendants are citizens of France, Texas, and Delaware. Compl. ¶¶ 1-5, 27. Plaintiff also alleges in a conclusory fashion that the French defendants have "continuous and systematic business contacts within the United States sufficient to subject [them] to this court's general personal jurisdiction." *Id.* ¶¶ 2-3. Accepting the allegations of the complaint as true, it appears this action is one that "*might* have been brought" in the District of New Mexico. *See* 28 U.S.C. § 1404(a) (emphasis added). As relevant witnesses are more likely to be in New Mexico, it would appear to be "in the interest of justice" to transfer the action there. *See id.*<sup>2</sup>

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<sup>1</sup> That rule provides, in part, that a complaint may be dismissed for failure to effect service by "the court, upon motion or its own initiative after notice to the plaintiff."

<sup>2</sup> Plaintiff makes a passing request for this court to specify that the transfer is to be to the Roswell branch of the District of New Mexico. However, according to the court's website, the court presence in Roswell consists solely of a part-time magistrate judge. Any particular divisional assignment is best left to the District of New Mexico.

**ORDER**

For the foregoing reasons, the court grants Medical Air's motion to transfer this action to the District of New Mexico under 28 U.S.C. § 1404(a). This transfer is without prejudice to a *sua sponte* motion to dismiss or a motion to dismiss by any defendant for failure to timely serve.

DATED: 7/11/06

  
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RONALD M. WHYTE  
United States District Judge

